



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0021]

RIN 1625-AA00

Safety Zones; Hawaiian Island Commercial Harbors, HI

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent safety zones in Hawaii's nine commercial harbors (Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahalui, Maui and Kawaihae and Hilo on the Island of Hawaii). The purpose of these safety zones is to expedite the evacuation of the harbors in the event a tsunami warning is issued for the main Hawaiian Islands.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Scott O. Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522-8264 (ext. 352), email Scott.O.Whaley@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2013-0021 in the "SEARCH" box and click "SEARCH." Click on "Submit a

Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2013-0021 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of

an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

Tsunamis can occur at any time. There is no tsunami season. The destructive potential of a tsunami can take lives, cause millions of dollars in property damage, and alter sensitive ecologies. The tsunami generated by the 9.0 earthquake that struck Japan in 2011 reached Hawaiian shores in approximately seven hours. More recently, in 2012 a tsunami was generated by a 7.7 earthquake originating from the Queen Charlotte Islands of British Columbia. The surge created from this earthquake reached the Hawaiian shores in less than four hours. No time can be wasted in the evacuation of the harbors once a tsunami warning has been issued.

The purpose for this rule is to evacuate and close Hawaii's commercial harbors, collectively or individually, after a

tsunami warning has been issued. It is crucial to minimize the number of vessels in Hawaii's commercial harbors to reduce the amount of vessel and port damage and potential harbor blockage that could occur in the event of a tsunami reaching the shores of the Hawaiian Islands. All Hawaiian Islands rely heavily on their commercial harbors for receiving goods and services. Dedicated on-island commercial salvage assets are limited so blockage of a channel or harbor by a vessel that failed to evacuate could have devastating impacts on local residents for a significant period of time.

The Coast Guard has met with industry partners, commercial mariners, and recreational boaters in the creation of this rule. Vessels are much safer at sea beyond the 300 feet or 50 fathom curve than in port during a tsunami.

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

C. Discussion of Proposed Rule

This rule will create safety zones encompassing each of Hawaii's commercial harbors. In the event a tsunami warning is issued, the Coast Guard will enforce these safety zones, closing those harbors within the anticipated impact area of the tsunami. When the safety zones are activated for enforcement, no vessels

will be permitted to enter the closed harbors. Enforcement of these safety zones will also trigger an immediate evacuation of the closed harbors. The harbors will remain closed until the Coast Guard reopens the specific harbor(s) impacted. Once the threat has passed and harbors have been assessed as safe for reentry of commercial navigation, the safety zones will be deactivated allowing vessels to transit the harbors in accordance with already established regulations.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This safety zone will only be activated for enforcement in the event the state of Hawaii is issued a tsunami warning for the safety of lives and property.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This safety zone would be activated, and thus subject to enforcement only when a tsunami warning is issued for the Main Hawaiian Islands. Once the threat has passed and harbors have been assessed as safe for reentry of commercial navigation, the safety zone will be deactivated allowing vessels to transit the harbors in accordance with already established regulations.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its

provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or

risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule will evacuate commercial harbors which anticipate tsunami impact. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165. 14-1414 to read as follows:

§ 165. 14-1414 Safety Zones; Hawaiian Islands Commercial

Harbors; HI.

(a) Location. The following areas are safety zones: The commercial harbors of Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaunapali, Lanai; Kahalui, Maui and Kawaihae and Hilo on the Island of Hawaii. The activation of these safety zones may include any combination of these harbors, or all of these harbors, dependent upon details in the tsunami warning. This safety zone extends from the surface of the water to the ocean floor.

(b) Regulations. When the safety zone is activated and, therefore, subject to enforcement, no person or vessel may enter or remain in the safety zone except for support vessels, support personnel, and other vessels authorized by the Captain of the Port, Sector Honolulu (COTP), or a designated representative of the COTP. All other applicable regulations in 33 CFR 165 remain in effect and subject to enforcement. You may contact the Coast Guard on VHF Channel 16 (156.800 MHz) or at telephone number 808-842-2600 to obtain clarification on safety zone transits and locations. Coast Guard patrol boats will be enforcing the safety zone and providing on-scene direction.

(c) Enforcement period. Paragraph (b) of this section will be enforced when a tsunami warning has been

issued for the Hawaiian Islands. The COTP will notify the public of any enforcement, suspension of enforcement, or termination of enforcement through the following appropriate means to ensure the widest publicity: broadcast notice to mariners, notices of enforcement, press releases and Homeport. Following the passage of a tsunami and harbor assessments, de-activation of these safety zones will be conducted through radio broadcast by the U.S. Coast Guard.

(d) Penalties. Vessels or persons violating this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: April 6, 2013

J. M. NUNAN
Captain, U.S. Coast Guard
Captain of the Port Honolulu

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